

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

\_\_\_\_\_  
No. 1:05CR6  
\_\_\_\_\_

United States of America

v.

Merico Demonz Stotts

Defendant

\_\_\_\_\_  
**Report and Recommendation Re: Petition for Warrant  
or Summons for Offender Under Supervision**  
\_\_\_\_\_

Pending is a “Petition for Warrant or Summons for Offender Under Supervision,” filed February 17, 2011, alleging that defendant violated conditions of supervised release. This matter is referred to the undersigned United States magistrate judge for review, hearing, and submission of a report with recommended findings of fact and conclusions of law. See United States v. Rodriguez, 23 F.3d 919, 920 n.1 (5th Cir. 1994); see also 18 U.S.C. § 3401(I) (2000); Local Rules for the Assignment of Duties to United States Magistrate Judges.

## **I. The Original Conviction and Sentence**

Defendant was sentenced on August 3, 2005, before The Honorable Thad Heartfield, U.S. District Judge of the Eastern District of Texas, after pleading guilty to the offense of felon in possession of a firearm, a Class C felony. This offense carried a statutory maximum imprisonment term of 10 years. The guideline imprisonment range, based on a total offense level of 23 and a criminal history category of IV, was 70 to 87 months. Defendant was subsequently sentenced to 70 months imprisonment followed by 2 years supervised release subject to the standard conditions of release, plus the special conditions of financial disclosure; drug aftercare; and a \$100 special assessment.

## **II. The Period of Supervision**

On September 10, 2010, defendant completed his period of imprisonment and began service of the supervision term.

## **III. The Petition**

United States Probation filed the pending Petition for Warrant or Summons for Offender Under Supervision on February 17, 2011. The petition alleges that defendant violated the following conditions of release:

1. Standard Condition: Defendant shall report to the probation officer as directed by the Court or probation officer, and shall submit a truthful and complete written report within the first five days of each month.
2. Standard Condition: Defendant shall notify the probation officer ten days prior to any change of address or employment.

As grounds, the petition alleges that: 1. Defendant failed to submit a written monthly report form for December 2010 and January 2011; and 2. On

December 29, 2010, Probation Officer Bryan Demar with the Southern District of Texas conducted a home visit at the offender's residence, and defendant's girlfriend reported that he moved out on December 27, 2010, and she did not know where he moved.

#### **IV. Proceedings**

On March 8, 2011, the undersigned United States Magistrate Judge convened a hearing pursuant to Rule 32.1, Federal Rules of Criminal Procedure, to hear evidence and argument on whether defendant violated conditions of supervised release, and the appropriate course of action for any such violations.

At the revocation hearing, counsel for the government and the defendant announced an agreement as to a recommended disposition. Defendant agreed to plead "true" to the allegation that he violated a standard condition of supervised release by failing to submit monthly written reports. In exchange for defendant's plea of "true," the government agreed to decline to proceed with remaining alleged violations of supervised release conditions. Further, the parties agreed the court should revoke defendant's supervised release and impose 6 months imprisonment, with no term of supervised release thereafter.

At the revocation hearing, defendant pled "true" to the allegation that he violated a standard condition of supervised release by failing to submit written monthly reports.

#### **V. Principles of Analysis**

According to Title 18 U.S.C. § 3583(e)(3), the Court may revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on

post-release supervision, if the Court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release. The original offense of conviction was a Class C felony; therefore, the maximum term of imprisonment authorized under 18 U.S.C. § 3583(e)(3) is 2 years.

According to U.S.S.G. § 7B1.1(a), if the court finds by a preponderance of the evidence that defendant violated a standard condition of supervised release by failing to submit written monthly reports, defendant will be guilty of committing a Grade C violation. U.S.S.G. § 7B1.3(a)(2) indicates upon a finding of a Grade C violation, the court may (A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.4(a) provides that in defendant's case a revocation of supervised release based on a Grade C violation and a criminal history category of IV, the guideline imprisonment range is 6 to 12 months.

18 U.S.C. §§ 3583(e) and 3553(a) provide that in determining sentence, the court shall consider:

1. The nature and circumstance of the offense and the history and characteristics of the defendant; see 18 U.S.C. § 3553(a)(1);
2. The need for the sentence imposed to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, other corrective treatment in the most effective manner; see 18 U.S.C. §§ 3553 (a)(2)(B)-(D);
3. Applicable guidelines and policy statement issued by the Sentencing Commission, for the appropriate application of the provisions when modifying or revoking supervised release pursuant to 28 U.S.C. §

994(a)(3), that are in effect on the date the defendant is sentenced; see 18 U.S.C. 3553(a)(4); see also 28 U.S.C. § 924(A)(3);

4. Any pertinent policy statement issued by the Sentencing Commission, pursuant to 28 U.S.C. § 994(a)(2), that is in effect on the date the defendant is sentenced; see 18 U.S.C. § 3553(a)(5); and
5. The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; see 18 U.S.C. § 3553(A)(6).

## **VI. Application**

Defendant pled “true” to the allegation that he violated a standard condition of supervised release failing to submit written monthly reports. Based upon defendant’s plea of “true” to the allegations and U.S.S.G. § 7B1.1(a), the undersigned finds that defendant violated conditions of supervised release by failing to submit written monthly reports.

The undersigned has carefully considered each of the five factors listed in 18 U.S.C. §§ 3583(e) and 3553(a). Defendant’s violation is a Grade C violation, and defendant's criminal history category is IV. Policy guidelines suggest 6 to 12 months imprisonment upon revocation. Defendant has demonstrated an inability to adhere to conditions of supervision. Defendant did not comply with the conditions of his supervision by failing to submit written monthly reports. As such, incarceration appropriately addresses defendant’s violation. The sentencing objectives of punishment, deterrence and rehabilitation will best be served by a term of incarceration.

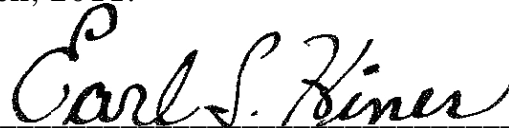
## RECOMMENDATIONS

1. The court should find that defendant violated a standard condition of supervised release, by failing to submit written monthly reports, in the manner alleged in the petition.
2. The petition should be granted and defendant's supervised release revoked pursuant to 18 U.S.C. § 3565.
3. Defendant should be sentenced to a term of imprisonment of 6 months.
4. Upon release of imprisonment, defendant should not be placed on supervised release.

## OBJECTIONS

At the close of the revocation hearing, defendant, defense counsel, and counsel for the government each signed a standard form waiving their right to object to the proposed findings and recommendations contained in this report, consenting to revocation of supervised release as recommended herein, and consenting to the imposition of the above sentence recommended in this report. Defendant waived his right to be present and speak before the district judge imposes the recommended sentence. Therefore, the court may act on the report and recommendation immediately.

SIGNED this 9 day of March, 2011.

A handwritten signature in black ink, reading "Earl S. Hines", written over a horizontal line.

Earl S. Hines  
United States Magistrate Judge